



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,248	11/07/2001	Joseph DeSouza	32086US1	6160

116 7590 02/10/2003

PEARNE & GORDON LLP  
526 SUPERIOR AVENUE EAST  
SUITE 1200  
CLEVELAND, OH 44114-1484

EXAMINER

RODGERS, MATTHEW E

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/037,248	DESOUZA, JOSEPH
	Examiner	Art Unit
	Matthew E. Rodgers	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 07 November 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-22 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the horizontal lines as claimed in “the latch mounting bracket and the catch member are each vertically symmetrical about horizontal lines” in claim 20, and the catch member being positioned so that it is symmetrical about a horizontal line must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation “a direction perpendicular to a plane of the fence” is indefinite since the orientation of the plane of the fence is not defined. Furthermore, the fence is associated as an intended use of the claimed invention and the feature is not required of the claimed invention where the fence is not positively cited as a critical element of the claimed invention.

The limitation "the latch mounting bracket and the catch member are each vertically symmetrical about horizontal lines" is indefinite since the orientation associated with the term "horizontal" is not established with respect to any part of the invention.

Claim 11 recites the limitation "the associated post" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claims 1 and 10, from which claim 11 depends, do not recite an associated post.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 2, 21 and 22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,176,043 to Gibbs (hereinafter "Gibbs"). Gibbs shows an adjustable gate hinge and latch system for a fence gate of a fence having a hinge (generally designated by 30) and a latch unit (44, 56, 66). The hinge (30, 28, 18) has an arrangement (29, 26, 28, 18) to permit adjustment of the gate relative to a fence in a direction perpendicular to a plane of a fence. The arrangement has two components (28, 30) that are relatively movable in a direction perpendicular to a plane of a fence and

are secured to each other subsequent to movement since the components (28, 30) rotate relative to each other and therefore move in a direction perpendicular to a plane of a fence. The first component (30) is fixedly attached to a first post (14) and the second component (28) is movable relative the first component. It should be noted that as the second component (28) is capable of rotating through 180 degrees (see figure 2) that at every point along its travel is moving perpendicular to at least one plane of a fence. The latch (44, 56, 66) has an arrangement (29, 18, 24) to permit adjustment of the gate relative to a fence in a direction perpendicular to a plane of a fence. The arrangement has a first component (66, 68, 18) and a second component (14) that are relatively movable in a direction perpendicular to a plane of a fence and are secured to each other subsequent to movement.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 12, 13 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,690,440 to Rogers (hereinafter “Rogers”). In Figure 1, Rogers shows an adjustable gate hinge and latch system for a fence gate of a fence having a hinge (11) and a latch unit. The latch has an arrangement (13, 14, 15) to permit adjustment of the gate relative to a fence in a direction perpendicular to a plane of a fence. The arrangement has a gate handle (15) fixedly attached to the gate and a latch pin (13) that are relatively movable in a direction perpendicular to a plane of a fence and are secured to each other subsequent to movement. The latch pin (13) is considered to be

movable relative the gate handle (15) since the bolts (14) can be removed and the pin (13) may be adjusted. Even though the direction perpendicular to the plane of the fence is not established in the claims of the instant invention (see rejection under 35 U.S.C. § 112 set forth above), the pin (13) is considered to be capable of being adjusted relative to the fence gate (15) in a direction perpendicular to the plane of the fence when the gate is open 90 degrees. A latch mounting bracket (19') is attached to a second post (22) on a first side of a fence. A catch member (18) is pivotally mounted relative to the latch mounting bracket. The catch member (18) has a center portion (31) to engage and retain the latch pin (13). The catch member (18) has an upper portion (upper tip designated by 27 in Figure 5) and a lower portion (bottom surface adjacent center portion 31) both of which may be used to actuate and operate the catch member. Even though the orientation of the term horizontal is not established in the claims of the instant invention (see rejection under 35 U.S.C. § 112 set forth above), the latch mounting bracket and the catch member are considered to be symmetrical about horizontal lines. The catch member is symmetrical about a horizontal line extending parallel to the plane of the fence shown in Figure 4 when the catch member is viewed from its top edge. The latch mounting bracket is symmetrical about a horizontal line extending perpendicular to the plane of the fence shown in Figure 4 when viewed as shown in Figures 3 and 5. It should be noted that the definition of the word "symmetrical" is taken from the tenth edition of Merriam-Webster's Collegiate Dictionary as "capable of division by a longitudinal plane into similar halves."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs in view of U.S. Patent No. 6,442,798 to Rupprechter (hereinafter “Rupprechter”). Gibbs shows an adjustable gate hinge and latch system for a fence gate of a fence having a hinge (generally designated by 30) and a latch unit (44, 56, 66). The hinge has a first component (30) and a second component (36) where the first member is fixedly attached to a first post. The second component (36) has a portion for accepting a hinge pin (38). The hinge includes a third component (28) pivotally connected to the second component (36) via the hinge pin (38) and the third component has elongate slots (29) to accept fasteners (26) for connection of the third component to a gate (10). The hinge can be inverted to be mounted on either of two posts associated with a gate and have a side extension to either a front or back surface of the first post (16). However, the second component (36) does not move relative the first component (30).

Rupprechter teaches that it is well known in the art to make a hinge having two components movable relative each other for the purpose of providing a hinge that may support heavier hinged members and having the ability to selectively and alternately adjust and fix the two components relative each other. The hinge has a first component (3) fixed to a stationary member (1) and a second component (4) attached to a hinged panel (2) selectively movable relative the first component. The second component has an

elongate slot (5) and the first component has an opening, a fastener (6) extends through the slot and the opening, and the fastener (6) is loosened to permit the relative movement of the components and is tightened to secure the components to each other. The first component (3) has a portion (14) engaged with the stationary member (1) and a portion (15) spaced from the stationary member (1). The second component (4) has a portion located adjacent the stationary member (1) and between the stationary member and the spaced-away portion (15) of the first component. The first component has a slot (20) between the engaged portion (14) and the spaced-away portion (15), and the second component has a portion extending from the portion adjacent to the stationary member (1) toward a pivot connection (13) of the hinge. The portion of the second component located adjacent the stationary member (1) is pressed between the stationary member (1) and the spaced-away portion (15) of the first component when the fastener is tightened.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to make the hinge of Gibbs but using the adjustable junction between the first (30) and second components (36) as taught by Rupprechter where the first component (3) of Rupprechter would be mounted in place of the first component (30) of Gibbs.

***Allowable Subject Matter***

Claims 14-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Rodgers whose telephone number is (703) 306-3406. The examiner can normally be reached on regular work hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

*MR*  
MR  
February 5, 2003

*Robert J. Sandy*  
ROBERT J. SANDY  
PRIMARY EXAMINER